

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

JMC RESTAURANT HOLDINGS, LLC; AND  
JMC RESTAURANT HOLDINGS INTERNATIONAL,  
LLC,

Plaintiffs,

-against-

MARCELO PEVIDA; JIA JU TAO; JOSEPH  
SILVESTRI; DOES 1-10; AND ABC BUSINESS  
ENTITIES 1-10,

Defendants.

Civil Action No.  
CV 14 6157

**ANSWER WITH  
AFFIRMATIVE DEFENSES**

Defendants, Marcelo Pevida (“Pevida”) and Jia Tu Tao (“Tao”) (collectively the “Defendants”), by their attorneys, The Shell Law Firm, PLLC, as and for their answer to the complaint herein, allege as follows:

**I. THE PARTIES**

1. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint.

2. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint.

3. Defendant Pevida admits the allegations contained within paragraph 3 of the complaint. Defendant Tao neither admits nor denies the allegations contained in paragraph 3 as they are not directed at him.

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4. Defendant Tao admits the allegations contained within paragraph 4 of the complaint. Defendant Pevida neither admits nor denies the allegations contained in paragraph 4 as they are not directed at him.

5. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

6. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the complaint.

## **II. JURISDICTION AND VENUE**

7. Defendants deny the allegations contained within paragraph 7 of the complaint.

8. Defendants deny the allegations contained within paragraph 8 of the complaint.

9. Defendants deny the allegations contained within paragraph 9 of the complaint.

10. Defendants deny the allegations contained within paragraph 10 of the complaint.

11. Defendants deny the allegations contained within paragraph 11 of the complaint.

## **III. BACKGROUND FACTS COMMON TO ALL COUNTS**

### **A. History Of Grimaldi's Pizzeria**

12. Defendants deny the allegations contained within paragraph 12 of the complaint.

13. Defendants deny the allegations contained within paragraph 13 of the complaint.

14. Defendants deny the allegations contained within paragraph 14 of the complaint.

15. Defendants deny the allegations contained within paragraph 15 of the complaint.

16. Defendants deny the allegations contained within paragraph 16 of the complaint.

17. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the complaint.

18. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the complaint.

**B. The Grimaldi's Pizzeria Family Of Service Marks**

19. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the complaint.

20. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the complaint.

21. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the complaint.

22. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the complaint.

23. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the complaint.

24. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the complaint.

25. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the complaint.

26. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the complaint.

27. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the complaint.

28. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the complaint.

29. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the complaint.

**C. Defendants Have No Relationship With Plaintiff**

30. Defendants deny the allegations contained within paragraph 30 of the complaint.

31. Defendants neither admit nor deny the allegations contained in paragraph 31 of the complaint, except to aver that no response is required as the allegations call for a legal conclusion and Defendants respectfully refer all questions of law to the Court.

32. Defendants neither admit nor deny the allegations contained in paragraph 32 of the complaint, except to aver that no response is required as the allegations call for a legal conclusion and Defendants respectfully refer all questions of law to the Court.

33. Defendants neither admit nor deny the allegations contained in paragraph 33 of the complaint, except to aver that no response is required as the allegations call for a legal conclusion and Defendants respectfully refer all questions of law to the Court.

34. Defendants neither admit nor deny the allegations contained in paragraph 34 of the complaint, except to aver that no response is required as the allegations call for a legal conclusion and Defendants respectfully refer all questions of law to the Court.

**D. Defendants' Deceptive Efforts To Trade On Plaintiffs' Service Marks, Trade Dress And Goodwill**

35. Defendants admit the allegations contained within paragraph 35 of the complaint.

36. Defendants admit the allegations contained within paragraph 36 of the complaint.

37. Defendants admit the allegations contained within paragraph 37 of the complaint.

38. Defendants admit the allegations contained within paragraph 38 of the complaint.

39. Defendants neither admit nor deny the allegations contained in paragraph 39 as they are not directed at these Defendants.

40. Defendants neither admit nor deny the allegations contained in paragraph 40 as they are not directed at these Defendants.

41. Defendants deny the allegations contained within paragraph 41 of the complaint.
42. Defendants deny the allegations contained within paragraph 42 of the complaint.
43. Defendants deny the allegations contained within paragraph 43 of the complaint.
44. Defendants deny the allegations contained within paragraph 44 of the complaint.
45. Defendants deny the allegations contained within paragraph 45 of the complaint.
46. Defendants deny the allegations contained within paragraph 46 of the complaint.
47. Defendants deny the allegations contained within paragraph 47 of the complaint.
48. Defendants deny the allegations contained within paragraph 48 of the complaint.
49. Defendants deny the allegations contained within paragraph 49 of the complaint.
50. Defendants deny the allegations contained within paragraph 50 of the complaint.
51. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the complaint.
52. Defendants deny the allegations contained within paragraph 52 of the complaint.
53. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the complaint.
54. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the complaint.

55. Defendants deny the allegations contained within paragraph 55 of the complaint.

56. Defendants deny the allegations contained within paragraph 56 of the complaint.

57. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the complaint.

58. Defendants deny the allegations contained within paragraph 58 of the complaint.

59. Defendants deny the allegations contained within paragraph 59 of the complaint.

60. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the complaint.

61. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the complaint.

62. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the complaint.

63. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the complaint.

64. Defendants deny the allegations contained within paragraph 64 of the complaint.

65. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the complaint.

66. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the complaint.

67. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the complaint.

68. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the complaint.

69. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the complaint.

70. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the complaint.

71. Defendants deny the allegations contained within paragraph 71 of the complaint.

72. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the complaint.

73. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the complaint.

74. Defendant Pevida denies the allegations contained within paragraph 74 of the complaint. Defendant Tao neither admits nor denies the allegations contained in paragraph 74 as they are not directed at him.



75. Defendant Pevida denies the allegations contained within paragraph 75 of the complaint. Defendant Tao neither admits nor denies the allegations contained in paragraph 75 as they are not directed at him.

76. Defendants deny the allegations contained within paragraph 76 of the complaint.

77. Defendants deny the allegations contained within paragraph 77 of the complaint.

78. Defendants deny the allegations contained within paragraph 78 of the complaint.

79. Defendants deny the allegations contained within paragraph 79 of the complaint.

80. Defendants deny the allegations contained within paragraph 80 of the complaint.

81. Defendants deny the allegations contained within paragraph 81 of the complaint.

82. Defendants deny the allegations contained within paragraph 82 of the complaint.

**COUNT ONE**  
**Trademark Infringement – 15 U.S.C. § 1114**

83. Defendants repeat and incorporate the answers contained in paragraphs 1-82 of the Answer as if fully set forth herein.

84. Defendants deny the allegations contained within paragraph 84 of the complaint.

85. Defendants deny the allegations contained within paragraph 85 of the complaint.

86. Defendants deny the allegations contained within paragraph 86 of the complaint.

87. Defendants deny the allegations contained within paragraph 87 of the complaint.

**COUNT TWO**

**Unfair Competition, False Designation of Origin, and Dilution – 15 U.S.C. § 1125**

88. Defendants repeat and incorporate the answers contained in paragraphs 1-87 of the Answer as if fully set forth herein.

89. Defendants deny the allegations contained within paragraph 89 of the complaint.

90. Defendants deny the allegations contained within paragraph 90 of the complaint.

91. Defendants deny the allegations contained within paragraph 91 of the complaint.

92. Defendants deny the allegations contained within paragraph 92 of the complaint.

93. Defendants deny the allegations contained within paragraph 93 of the complaint.

**COUNT THREE**

**Common Law Trademark Infringement**

94. Defendants repeat and incorporate the answers contained in paragraphs 1-93 of the Answer as if fully set forth herein.

95. Defendants deny the allegations contained within paragraph 95 of the complaint.

96. Defendants deny the allegations contained within paragraph 96 of the complaint.

97. Defendants deny the allegations contained within paragraph 97 of the complaint.

98. Defendants deny the allegations contained within paragraph 98 of the complaint.

99. Defendants deny the allegations contained within paragraph 99 of the complaint.

100. Defendants deny the allegations contained within paragraph 100 of the complaint.

101. Defendants deny the allegations contained within paragraph 101 of the complaint.

**COUNT FOUR**

**Contributory Trademark Infringement, Unfair Competition, False Designation of Origin, and Dilution**

102. Defendants repeat and incorporate the answers contained in paragraphs 1-101 of the Answer as if fully set forth herein.

103. Defendants deny the allegations contained within paragraph 103 of the complaint.

104. Defendants deny the allegations contained within paragraph 104 of the complaint.

105. Defendants deny the allegations contained within paragraph 105 of the complaint.

106. Defendants deny the allegations contained within paragraph 106 of the complaint.

107. Defendants deny the allegations contained within paragraph 107 of the complaint.

108. Defendants deny the allegations contained within paragraph 108 of the complaint.

109. Defendants deny the allegations contained within paragraph 109 of the complaint.

110. Defendants deny the allegations contained within paragraph 110 of the complaint.

**COUNT FIVE**

**Vicarious Trademark Infringement, Unfair Competition, False Designation of Origin, and Dilution**

111. Defendants repeat and incorporate the answers contained in paragraphs 1-110 of the Answer as if fully set forth herein.

112. Defendants deny the allegations contained within paragraph 112 of the complaint.

113. Defendants deny the allegations contained within paragraph 113 of the complaint.

114. Defendants deny the allegations contained within paragraph 114 of the complaint.

115. Defendants deny the allegations contained within paragraph 115 of the complaint.

116. Defendants deny the allegations contained within paragraph 116 of the complaint.

**COUNT SIX**

**Unfair Competition, False Designation of Origin, and Dilution – N.Y. GBS Law § 3601-L**

117. Defendants repeat and incorporate the answers contained in paragraphs 1-116 of the Answer as if fully set forth herein.

118. Defendants deny the allegations contained within paragraph 118 of the complaint.

119. Defendants deny the allegations contained within paragraph 119 of the complaint.

120. Defendants deny the allegations contained within paragraph 120 of the complaint.

121. Defendants deny the allegations contained within paragraph 121 of the complaint.

122. Defendants deny the allegations contained within paragraph 122 of the complaint.

**COUNT SEVEN**

**Tortious Interference**

123. Defendants repeat and incorporate the answers contained in paragraphs 1-222 of the Answer as if fully set forth herein.

124. Defendants deny the allegations contained within paragraph 124 of the complaint.

125. Defendants deny the allegations contained within paragraph 125 of the complaint.

126. Defendants deny the allegations contained within paragraph 126 of the complaint.

127. Defendants deny the allegations contained within paragraph 127 of the complaint.

128. Defendants deny the allegations contained within paragraph 128 of the complaint.

129. Defendants deny the allegations contained within paragraph 129 of the complaint.

130. Defendants deny the allegations contained within paragraph 130 of the complaint.

131. Defendants deny the allegations contained within paragraph 131 of the complaint.

132. Defendants deny the allegations contained within paragraph 132 of the complaint.

133. Defendants deny the allegations contained within paragraph 133 of the complaint.

134. Defendants deny the allegations contained within paragraph 134 of the complaint.

**COUNT EIGHT**  
**Unjust Enrichment**

135. Defendants repeat and incorporate the answers contained in paragraphs 1-134 of the Answer as if fully set forth herein.

136. Defendants deny the allegations contained within paragraph 136 of the complaint.

137. Defendants deny the allegations contained within paragraph 137 of the complaint.

138. Defendants deny the allegations contained within paragraph 138 of the complaint.

139. Defendants deny the allegations contained within paragraph 139 of the complaint.

140. Defendants deny the allegations contained within paragraph 140 of the complaint.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint and for such other and further relief as the Court may deem just and proper.

Defendants hereby deny any and all allegations contained in the complaint to which a response has not been provided.

### **AFFIRMATIVE DEFENSES**

#### **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

141. Plaintiffs have failed to state claims against Defendants upon which relief may be granted.

#### **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

142. The Complaint fails to identify with any particularity or specificity the factual allegations to which Plaintiffs' purported claims and/or cause of actions purport to relate and the Complaint therefore fails to state a justifiable claim against Defendants.

#### **AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

143. Defendants did not willfully, knowingly or negligently commit any wrongful, illegal or inappropriate acts.

#### **AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

144. Plaintiffs' Complaint is barred by the doctrines of waiver, estoppel and/or laches.

#### **AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

145. If any damages have been sustained by Plaintiffs, which damages are expressly denied, then all such damages were caused or brought about in whole or in part by the breach of contract, negligence and failure of due care of Plaintiffs and/or their agents or other third parties,

and any recovery thereby should be diminished in proportion to which Plaintiffs' culpable conduct bears to the conduct which caused the alleged damages or is otherwise barred.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

146. Any alleged wrongdoing was the result solely of the actions of third parties and not the Defendants.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

147. Any damages allegedly sustained by Plaintiffs was the result solely of the actions of Plaintiffs or other third parties and not the Defendants.

**AS AND FOR AN EIGHT AFFIRMATIVE DEFENSE**

148. The Complaint fails to state facts sufficient to establish the jurisdiction of this court, *inter alia*, over conduct alleged to occur in China and further because the conduct complained of does not adversely affect commerce or harm citizens within the United States.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

149. Plaintiffs' claims are barred because they have been filed in an inconvenient forum or *forum non conveniens*.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

150. Defendants hereby raise and preserve their defenses of improper venue.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

151. Plaintiffs' claims are barred because Plaintiffs lack standing to bring such claims.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

152. Plaintiffs alleged damages, if any, are barred by Plaintiffs' failure to mitigate such damages.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

153. Plaintiffs' claims are barred by the equitable doctrines of laches and estoppel

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

154. Plaintiffs have failed to join all indispensable parties; *inter alia*, as a result of such failure complete relief cannot be accorded to those already parties to the action and will result in prejudice to Defendants, in any possible future litigation.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

155. Plaintiffs' claims are barred because some or all of the parties have been improperly joined in this action.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

156. Defendants are entitled to setoff for all amounts paid, payable by or available from collateral sources, including any litigation pending in China.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

157. Plaintiffs' claims are barred by their unclean hands.

**AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE**

158. Plaintiff's claims are barred by waiver.

**AS AND FOR AN NINETEENTH AFFIRMATIVE DEFENSE**

159. Plaintiff's claims are barred because the alleged conduct of Defendants is privileged.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

160. The Plaintiffs' alleged marks are descriptive and have not attained secondary meaning.



**AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

161. Any use in China of the term Grimaldi's, terms containing Grimaldi's, or terms present in any alleged marks of Plaintiffs does not result in confusion with Plaintiffs' alleged marks.

**AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE**

162. Plaintiffs' marks are not famous and distinctive, as required by 15 U.S.C. § 1125 and New York State law.

**AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE**

163. Plaintiffs have abandoned all rights to their marks, including those containing GRIMALDI'S and variations thereof, *inter alia*, due to naked licensing and/or sublicensing of the mark.

**AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE**

164. Defendants hereby give notice that they intend to rely upon such other and further defenses as may become available or apparent during discovery proceedings in this action and hereby reserve the right to amend their Answer to assert any such defense by appropriate motion.

**WHEREFORE**, Defendants request that the Summons and Complaint be dismissed with prejudice and that they take nothing, and prays that Defendants be awarded costs of this lawsuit and attorneys' fees, including those available under 17 U.S.C. § 1117 and that Defendants be awarded such other and further relief as the Court deems proper.

Dated: New York, New York  
January 6, 2015

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